

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3588 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

LMP PRECISION ENGG. CO. LTD

Versus

STATE OF GUJARAT

Appearance:

MR KH KAJI for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 09/07/98

ORAL JUDGEMENT (Per C.K.Thakker, J)

This petition filed by the petitioner is for an appropriate writ, direction or order declaring that the levy of interest on Sales taxes dues under the Central Sales Tax Act, 1956 was illegal and without jurisdiction and directing the respondent authorities to refund an amount of Rs.15,46,740/- alongwith the interest at the

rate of 21% per annum from the date of the payment by the petitioner till the date of refund by the respondents and further directing the respondent no.3 to decide the appeal pending before him.

2. It is the case of the petitioner that it paid an amount of interest as mentioned in Annexure A to the petition. It is his case that the respondent Authorities were not entitled to levy interest. Hence, payment of interest was contrary to law and it is required to be refunded to the petitioner. It is also contended that the point is concluded by a pronouncement of the Supreme Court in India Carbon Ltd. Vs. State of Assam; 106 STC 460. Hence, the petitioner cannot be deprived of refund of interest. It is further stated that though an appeal under Section 65 of the Sales Tax Act, 1969 is filed and is pending before the Assistant Commissioner of Sales Tax (Appeals) respondent no.3 herein, it is still not decided. It is also stated that in spite of reminders the authorities have not done anything in the matter. On the contrary, in para.7 of the petition, it is stated that the third respondent declined to pass any order on appeal though the hearing is concluded long back, on the ground that he has not received any direction for refund of interest from respondent no.1 and 2. It is submitted by Mr.Kazi that when the point is concluded by a decision of the Supreme Court, it was not open on the part of the respondents to refuse such relief. He, therefore, submitted that even though the appeal is pending, in the facts and circumstances, this is eminently a fit case in which appropriate direction regarding refund of interest be issued to the respondents.

3. Mr.Doshit, Learned Counsel for the respondent authorities submitted that the ratio laid down by the Supreme Court in India Carbon Ltd. (Supra) would not apply to the facts of the present case. He submitted that it is still to be decided whether on the basis of the law declared by the Supreme court, the petitioner would be entitled to refund of interest or not. In any case, when a statutory remedy is available to the petitioner and has already been availed of, and the appeal is pending, it is in the fitness of things, if a direction is issued to the appellate authority to dispose of the appeal in accordance with law.

4. On 4th May, 1998, when the matter was placed before a Division Bench, the Division Bench passed the following order :-

"Notice returnable on 6.7.98. In the meantime it

will be open for the Appellate Authority. i.e. respondent no.3 to proceed with the matter and dispose it of preferably before the next day of hearing."

5. Even today, neither the petitioner nor the respondents are in a position to state whether the appeal is disposed of. In view of the fact the statutory remedy of appeal is available and the petitioner has already availed itself of the same and the appeal is pending, in our opinion, it would be appropriate if, without expressing any opinion on merits, we direct the Appellate Authority to dispose of the appeal in accordance with law as expeditiously as possible preferably within six weeks from the receipt of the writ. We may state that we are not expressing any opinion on merits of the matter and the appeal will be disposed of strictly on its own merits. Notice discharged. No order as to costs.
